

# SENATE BILL REPORT

## SB 5394

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As of January 27, 2015

**Title:** An act relating to clarifying the applicability of child abduction statutes to residential provisions ordered by a court.

**Brief Description:** Clarifying the applicability of child abduction statutes to residential provisions ordered by a court.

**Sponsors:** Senators Rivers, Darneille, Kohl-Welles, Cleveland, Brown and Keiser.

**Brief History:**

**Committee Activity:** Law & Justice: 1/27/15.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Aldo Melchiori (786-7439)

**Background:** Custodial interference in the first degree can be committed by a parent in two ways: (1) a parent may take, entice, retain, detain, or conceal the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan with the intent to hold the child permanently or for a protracted period; expose the child to a substantial risk of illness or physical injury; or cause the child to be removed from the state of usual residence; or (2) the parent or other person acting under the directions of the parent may intentionally take, entice, retain, or conceal a child, under the age of 18 and for whom no lawful custody order or parenting plan has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period. Custodial interference in the first degree is an unranked, class C felony.

Custodial interference in the second degree can be committed by a parent in three ways: (1) the parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan; (2) the parent has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt; or (3) if the court finds that the parent has engaged in a pattern of willful violations of the court-ordered residential provisions. The first conviction of custodial interference in the second degree is a gross misdemeanor. The second or subsequent conviction of custodial interference in the second degree is an unranked, class C felony.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

In *State v. Veliz*, the issue before the Supreme Court of Washington was whether a domestic violence protection order qualified as a court-ordered parenting plan for the purposes of custodial interference in the first degree. The court held that it did not, reasoning that the term parenting plan was a term of art specific to dissolution and legal separation proceedings and that because there was no parenting plan in place when Mr. Veliz took the child, there was insufficient evidence to sustain the conviction. The domestic violence protection order with residential provisions did not qualify as a parenting plan.

**Summary of Bill:** The requirement that there must be a court-ordered parenting plan in place before custodial interference can be charged is eliminated. Both custodial interference in the first and second degrees can be violated if a parent intentionally denies access to a child by the other parent in violation of any court order making residential provisions for the child.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This is a small, but important, step to fix this loophole in the child abduction statutes. Residential provisions are legally obtained court orders that need to be enforced when a child is abducted. It takes time to draft and get court approval of parenting plans. Residential provisions in other court orders need to be enforceable in the meantime.

**Persons Testifying:** PRO: Senator Rivers, prime sponsor; Alex Kory, Legal Voice; Grace Huang, WA State Coalition Against Domestic Violence.